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91-1720

Supreme Court, U.S.
FILED
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NO._____

IN THE SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1992

$390,047 in U.S. CURRENCY and JESUS JOSE CASTRO VASQUEZ and LUZ MARLENE CASTRO,
Petitioners

vs.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Does Appellate jurisdiction exist over an in rem judgment in a civil forfeiture action involving currency in the absence of a stay of execution of the judgment? Do Appellate Courts have in personam jurisdiction?

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The Fifth, Seventh, Ninth and Eleventh Circuits follow the rule that where there has been no stay of a judgment in a civil forfeiture action, execution of the judgment removes the res from the control of court and jurisdiction in both the district and appellate courts is extinguished. The First, Second and Fourth Circuits have ruled that the courts have in personum jurisdiction of the parties and execution of the judgment does not extinguish appellate jurisdiction. The Third Circuit holds that courts never lose control of an incorporeal res. The disparity should be resolved by this court 4

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OPINION BELOW

The decision of the United States Court of Appeals for the Ninth Circuit dismissing Petitioner's appeal for lack of jurisdiction was made in October 17, 1991. The order denying Petitioner's request for rehearing was denied on January 30, 1992. Copies of the decision and order are attached as Appendices to this petition.

JURISDICTION OF THIS COURT

This court has jurisdiction pursuant to 28 U.S.C. 1254

STATEMENT OF THE CASE

On May 1, 1989, the United States government seized for forfeiture petitioners' money in the sum of $390,047.55 alleging a violation of 31 U.S.C. 5324(3) which prohibits the structuring of currency deposits in banks to avoid the reporting requirements of 31 U.S.C. 5313(a). This latter section requires a bank receiving a deposit in excess of $10,000.00 to file a report of the transaction. The district court held that probable cause existed to believe that petitioners had intentionally structured the deposits and on July 30, 1990 the ordered funds forfeited pursuant to 18 U.S.C. 981(a)(1)(A).

Petitioner filed a timely motion of appeal but did not request a stay of judgment in order to prevent execution of the order. The United States Marshall's Office executed on the order of forfeiture and it transferred the funds to the Department of Justice Assets Forfeiture Fund. Respondent then moved of the Court of Appeals to dismiss the appeal arguing that in an in rem action

removal of the res from the control of the court terminated the court's jurisdiction

The Ninth Circuit Court of Appeals in its Memorandum of Decision of October 17, 1991, agreed with Respondent holding that the "court's subject matter jurisdiction over an in rem action terminates once the property involved is removed from the court's control." The court went on to state that a stay of judgment was a prerequisite to preserve jurisdiction for appeal. The court further held that when traditional in rem principles apply to an appeal challenging an order of forfeiture that principles of in personam jurisdiction may not be asserted to confer jurisdiction over the appeal.

REASONS FOR ALLOWANCE OF THE WRIT

The Fifth, Seventh, Ninth and Eleventh Circuits follow the ancient admirality rule that in rem jurisdiction requires that the res remain within the jurisdiction of the courts until the end of the appellate process and that the removal of the res, from the courts control, destroys its jurisdiction. These same courts recognize exceptions to the rule when removal of the res is accidental, fraudulent or improper. They further hold that in civil forfeiture cases filed by the government, that execution of the judgment removes the res from the control of the courts and they can no longer exercise jurisdiction over the case because they have no in personam jurisdiction over the government. They state that the only manner of preserving the courts jurisdiction is for a party to obtain a stay of execution or to file a supersedeas bond. United States v. 29,959.99 United States Currency, 931 F. 2d 549 (9th Cir.) 1991); United States v. $84,740.00 United States Currency, 900 F.2d 1402 (9th Cir. 1990);

United States v. Tit's Cocktail Lounge, 873 F.2d 141 (7th Cir. 1989); United States v. $79,000.00 United States Currency, 801 F.2d 738 (5th Cir. 1986); United States v. One Lear Jet Aircraft, 836 F.2d 1571 (11th Cir.) (en banc), cert. denied, 487 U.S. 1204, 108 S.Ct. 2844, 101 L.Ed.2d 881 (1988).

The First, Second and Fourth Circuits adopting the position of the dissenters in One Lear Jet, supra., have abandoned the above principle describing it as a principle of legal fiction whose legal construct is of dubious validity. The have further held that in rem jurisdiction was created to provide a convenient forum for admirality cases and that the principle should not be transformed into a weapon to defeat that very purpose. These courts have also ruled that by filing civil forfeiture suits the United States has submitted itself to the in personam jurisdiction of the court and should not be allowed to evade appellate review based on a defective legal fiction. U.S. v. One Lot of $25,721.00 in Currency, 938 F.2d 1417 (1st Cir. 1991);

U.S. v. Aiello, 912 F.2d 4 (2nd Cir. 1990), cert. denied, ___U.S.___, 111 S.Ct. 757, 112 L.Ed. 2d 777 (1991); U.S. v. $95,945.18, 913 F.2d 1106 (4th Cir. 1990).

The rationale used by these circuits for discarding the "no res, no jurisdiction" rule is as follows:

> "Unlike the typical case where the defendant ship stealthily absconds from the port and leaves the plaintiff with no res from which to collect, here the defendant res is in the possession of the United States and thus in no danger of disappearing. Because the res is unlikely to disappear, we see no reason to require the claimant to file a stay of execution or supersedeas bond in a civil forfeiture action, because such bonds are typically filed to protect the interests of the party that prevailed in the district court. Having prevailed below, the government, if it wins the appeal, is assured of execution regardless of whether [the claimant] files a bond or stays execution of the judgment. United States v. $95,945.18, U.S. Currency, supra, 1109. (footnotes omitted).

The Third Circuit has approached the issue of jurisdiction in a totally different manner. This court holds that they do not lose jurisdiction of an appeal where the property involved is an incorporeal res such as money. They state that transferring seized money from one

government account to another government account does not remove the res from the district in which the forfeiture proceedings were filed because deeming the obligation to be located in any particular place would be a complete legal fiction. To the argument that the court lost jurisdiction because it lost control of the res upon execution, it holds that the transfer of the res from one government fund to another government fund, both accounts of the United States Treasury, did not deprive the federal courts of jurisdiction.

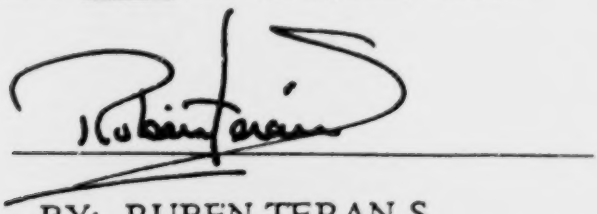
The decision of the eight circuit courts considering the issue of jurisdiction and whether in rem or in personam principles apply in civil forfeiture actions brought by the United States government are diametrically opposed to each other. Four circuits follow the traditional admirality rule of "no res, no jurisdiction." Three circuits describe the "no res, no jurisdiction" rule as an antiquated legal fiction whose principles are not appropriate in todays society. Another circuit, while not

abandoning traditional in rem principles, takes a middle ground holding that the court never loses jurisdiction when the property is an incorporated res such as money.

CONCLUSION

This honorable court should grant certiorari in order to resolve the conflict between the decisions of the various circuit courts. This court has not previously ruled on the issue presented.

Dated this 20th day of April, 1992.



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APPENDIX 1

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	NO. 90-16194
Plaintiff-Appellee,	D.C. NO. CV-89-262-TUC-WDB
v.	MEMORANDUM*
$390,047.55 IN U.S. CURRENCY,	
Defendant,	
and	
JESUS JOSE CASTRO-VASQUEZ and LUZ MARLENE CASTRO,	
Claimants-Appellants.	

Appeal from the United States District Court
for the District of Arizona
William D. Browning, District Judge Presiding

Submitted October 8, 1991**
San Francisco, California

Before: GOODWIN, NORRIS and THOMPSON,
Circuit Judges

OVERVIEW

Claimants Jesus Jose Castro-Vasquez and Luz Marlene Castro appeal a district court order requiring the forfeiture of $390,047.55 deposited by them into three Arizona Bank accounts between 1987 and 1989. Many of these deposits were made on the same day, and each was for an amount less than $10,000.00. The district court held that probable cause existed to believe the claimants had intentionally structured the deposits in violation of 31 U.S.C. Sec. 5324(3).[1] As a result of claimants' actions, the court ordered the funds forfeited pursuant to 18 U.S.C. Sec. 981(a)(1)(A).

Following the judgment, claimants timely filed a notice of appeal with this court. No attempt was made, however, to seek a stay of judgment or to file a

---

[1] 31 U.S.C. 5324(3) prohibits the structuring of deposits in an attempt to evade the reporting requirements of 31 U.S.C. 5313(a). This section requires any bank receiving a deposit in excess of $10,000 to file a report of the transaction.

supersedeas bond in order to prevent execution of the order. Subsequently, on October 5, 1990, the order of forfeiture was executed by the United States Marshal's office, which immediately transferred the funds to the Department of Justice Assets Forfeiture Fund.[2] Following execution of the order, appellee moved to dismiss the appeal as moot, arguing that this court's in rem jurisdiction over the property terminated once the funds were removed from the district court's control.

We agree with the appellee that in rem action terminates once the property involved is removed from the curt's control.

We agree with the appellee that in rem jurisdiction was lost when the funds were transferred to the Assets

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[2] The Department of Justice Assets Forfeiture Fund serves as the repository for "all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice . . . ." 28 U.S.C. 524(c)(4). Proceeds from the Fund may be utilized at the discretion of the Attorney General. 28 U.S.C. 524(c)(1)

Forfeiture Fund. Accordingly, we dismiss this appeal.

DISCUSSION

The court's subject matter jurisdiction over an in rem action terminates once the property involved is removed from the court's control. Pennington v. Fourth National bank, 243 U.S. 269, 272 (1917); United States v. $57,480.05 United States Currency and Other Coins, 722 F.2d 1457, 1459 (9th Cir. 1984). We have consistently applied this rule to forfeiture proceedings, since by their very nature such actions are in rem. See, e.g., United States v. $2,490.00 in United States Currency, 825 F.2d 1419, 1420 (9th Cir. 1987) ("Because forfeiture proceedings are in rem, the court's subject matter jurisdiction is dependent on its continuing control over the property."). Consequently, unless control over the res is preserved following an order of forfeiture, an execution of that order will terminate our subject matter jurisdiction over the property. Id. at 1420. The filing of a notice of

appeal, without further action, is insufficient to protect the court's control over the res. Id.; American Bank of Wage Claims v. Registry of Dist. Ct., 431 F.2d 1215, 1218 (9th Cir. 1970).

Claimants in this case timely filed a notice of appeal of the district court's judgment. However, they failed to take any further action to preserve the court's control over the contested funds. At no time did they file, or attempt to file, a stay of the judgment in order to preserve jurisdiction for appeal. As a result, the court ceased to control the funds once appellee transferred them to the Assets Forfeiture Fund. Consequently, at the moment this transfer occurred, the court's subject matter jurisdiction over the property was destroyed. $57,480.05 United States Currency and Other Coins, 722 F.2d at 1459.

Claimants correctly assert that exceptions to this general rule have been recognized where the removal of the contested property from the court's control was

"accidental or fraudulent or improper." The Rio Grande, 90 U.S. (23 Wall.) 458, 465. However, these exceptions, while "frequently acknowledged in principle," are rarely, if ever, actually applied. United States v. Ten Thousand Dollars in United States Currency, 860 F.2d 1511, 1513 (9th Cir. 1988). No exception applies here.

The claimants are represented by competent counsel. They made no attempt to obtain a stay of the judgment in order to preserve the court's jurisdiction. Rather, the claimants mistakenly relied on their notice of appeal to protect against execution of the district court order. As we have repeatedly held, however, the filing of such a notice of appeal, without further action, is ineffective to prevent an otherwise valid execution of a forfeiture order. $2,490.00 in United States Currency, 825 F.2d at 1420. Consequently, while the execution of the district court's order may have taken claimants by surprise, it cannot be considered accidentl, fraudulent or improper.

Claimants further assert that, because the res was

transferred to the Assets Forfeiture Fund and not directly to the Treasury, the court still maintains control over the funds. In support of this contention claimants point to 18 U.S.C. Sec. 981(c), which states that "property taken or detained under this section . . . shall be deemed to be in the custody of the Attorney General, the Secretary of the Treasury, or the Postal Service . . . subject only to the orders and decrees of the court or the official having jurisdiction thereof."

Reliance on section 981(c) is misplaced. A careful reading of the section reveals that it only applied to the exertion of custodial authority over the res while a forfeiture action is pending. It does not allow a court to retain control over the property after the proper execution of a valid forfeiture order. Furthermore, the fact that the forfeited funds were released to an agency or account other than the Treasury is of little consequence, because, unless the recipient is itself under the control of the court, release of property to another government

agency or account extinguishes the court's control. See United States v.United States Currency in the Amount of $110,000.00, 735 F.2d 326, 327 (9th Cir. 1984 (court lacked jurisdiction over property released to the Drug Enforcement Administration); United States v. 66 Pieces of Jade, 760 F.2d 970, 972 (9th Cir. 1985) (court lacked jurisdiction where res was released to United States Customs Service).

Finally, the claimants argue that his court may assert in personam jurisdiction over their appeal. We disagree. When traditional in rem principles are applicable to an appeal challenging an order of forfeiture, we will not look to the jurisdictional standards established under International Shoe Co. v. Washington, 326 U.S. 310 (1945) and its progeny. $2,490.00 in United States Currency, 825 F.2d at 1420.

We dismiss this appeal for lack of subject matter jurisdiction over the res.

DISMISSED.

APPENDIX 2

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	) NO. 90-16194
Plaintiff-Appellee,	) D.C. NO. CV-89-262-TUC-WDB
v.	) ORDER
$390,047.55 IN U.S. CURRENCY,	)
Defendant,	)
and	)
JESUS JOSE CASTRO VASQUEZ and LUZ MARLENE CASTRO,	)
Claimants-Appellants.	)

Before: GOODWIN, NORRIS and THOMPSON, Circuit Judges.

The panel, as constituted above, has voted unanimously to deny the petition for rehearing. A majority of the panel has voted to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for an en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is DENIED, and the suggestion for a rehearing en banc is REJECTED.

(2)

No. 91-1720

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1991

JESUS JOSE CASTRO-VASQUEZ
AND LUZ MARLENE CASTRO, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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BEST AVAILABLE COPY

QUESTION PRESENTED

Whether the court of appeals lacked jurisdiction over an appeal from an *in rem* forfeiture proceeding after the *res* was removed from the court's jurisdiction.

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In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-1720

JESUS JOSE CASTRO-VASQUEZ
AND LUZ MARLENE CASTRO, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 10-17) is unreported, but the judgment is noted at 946 F.2d 899 (Table). The order of the district court is unreported, but is reprinted as an appendix to this brief. App., *infra*, 1a-5a.

JURISDICTION

The judgment of the court of appeals was filed on October 8, 1991. A petition for rehearing was denied on January 30, 1992. Pet. App. 18-19. The petition for certiorari was filed on April 27, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Between 1987 and 1989, petitioners made 127 deposits totalling over $900,000 in accounts at three Arizona banks. Each of the deposits was for an amount less than $10,000. On 35 days during this period, petitioners made a total of 81 deposits of less than $10,000. Pet. App. 11; App., *infra*, 1a, 3a; Gov't C.A. Br. 4.

On May 11, 1989, the Internal Revenue Service seized $390,047.55 in the accounts. On May 16, 1989, the United States filed an *in rem* action in the United States District Court for the District of Arizona seeking forfeiture of the seized funds under 18 U.S.C. 981(a)(1)(A). The United States alleged that petitioners had intentionally structured the deposits, in violation of 31 U.S.C. 5324(3), to avoid the requirement of 31 U.S.C. 5313(a) that any bank receiving a deposit in excess of $10,000 file a report of the transaction with the Secretary of the Treasury. Pet. App. 11; Gov't C.A. Br. 3, 4.

2. The district court held that there was probable cause to believe that petitioners had intentionally structured the deposits to avoid the reporting requirements. In particular, the court found that petitioners' 81 deposits of less than $10,000 on 35 days showed an intent to structure the deposits. App., *infra*, 3a. Accordingly, the court ordered the funds forfeited to the United States under Section 981(a)(1)(A). Pet. App. 11.

Petitioners filed a notice of appeal, but they failed to seek a stay of judgment or obtain a supersedeas bond to prevent execution of the court's order. On October 5, 1990, the United States Marshal executed the order and transferred the forfeited funds to the Department of Justice Assets Forfeiture Fund in the United States Treasury. Pet. App. 11-12. The

government then moved to dismiss the appeal on the ground that *in rem* jurisdiction over the property terminated once the funds were removed from the district court's control.

3. The court of appeals dismissed petitioners' appeal. Pet. App. 10-17. It explained that "[t]he court's subject matter jurisdiction over an *in rem* action terminates once the property involved is removed from the court's control." *Id.* at 13. In applying this rule to petitioners' appeal, the court noted that petitioners "are represented by competent counsel" and that "[t]hey made no attempt to obtain a stay of judgment in order to preserve the court's jurisdiction." *Id.* at 15. The court also rejected the argument that it could retain jurisdiction over the forfeited funds pursuant to 18 U.S.C. 981(c), which provides that property forfeited under Section 981 "shall be deemed to be in the custody of the Attorney General, the Secretary of the Treasury, or the Postal Service * * * subject only to the orders and decrees of the court or the official having jurisdiction thereof." The court held that Section 981(c) applies "only * * * to the exertion of custodial authority over the *res* while a forfeiture action is pending. It does not allow a court to retain control over the property after the execution of a valid forfeiture order." Pet. App. 16. Finally, the court held that it did not have *in personam* jurisdiction over the appeal because the case was a traditional *in rem* action subject to *in rem* jurisdictional principles. *Id.* at 17.

ARGUMENT

Petitioners contend (Pet. 4-8) that the court of appeals erred in dismissing their appeal of the district court's order forfeiting their funds to the government. As petitioners point out, there is a conflict in

the courts of appeals over whether, in an *in rem* forfeiture proceeding, the removal of the *res* from the geographic jurisdiction of the court deprives the court of jurisdiction.*

On February 24, 1992, this Court granted the petition for a writ of certiorari in *Republic National Bank* v. *United States*, 112 S. Ct. 1159. That case presents the question whether the removal of the *res* from the district in an *in rem* forfeiture proceeding deprives the court of appeals of jurisdiction. In *Republic National Bank*, the government filed an *in rem* action under 21 U.S.C. 881 seeking the forfeiture of a single-family residence. While the case was

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* In addition to the court of appeals in this case, the Seventh and Eleventh Circuits adhere to the view that judicial control of the *res* is a prerequisite to *in rem* jurisdiction. See *United States* v. *Tit's Cocktail Lounge*, 873 F.2d 141, 143 (7th Cir. 1989); *United States* v. *One Lear Jet Aircraft*, 836 F.2d 1571 (11th Cir.) (en banc), cert. denied, 487 U.S. 1204 (1988). In a recent unpublished decision, the Sixth Circuit agreed with the Seventh, Ninth, and Eleventh Circuits. See *United States* v. *A 1985 Cadillac Fleetwood*, No. 91-3388 (6th Cir. Sept. 12, 1991), petition for cert. pending *sub nom. Price* v. *United States*, No. 91-1141 (filed Jan. 10, 1992). The Fifth Circuit also appears to adhere to that rule. See *United States* v. *$79,000 in U.S. Currency*, 801 F.2d 738, 739 (5th Cir. 1986). On the other hand, four courts of appeals take the view that even after the departure of the *res* from the jurisdiction of the court, the court retains jurisdiction over the government and thus may order the government to return forfeited funds. *United States* v. *$12,390*, 956 F.2d 801 (8th Cir. 1992); *United States* v. *One Lot of $25,721.00 in Currency*, 938 F.2d 1417, 1419 (1st Cir. 1991); *United States* v. *$95,945.18, United States Currency*, 913 F.2d 1106, 1109 (4th Cir. 1990); *United States* v. *Aiello*, 912 F.2d 4, 7 (2d Cir. 1990), cert. denied, 111 S. Ct. 757 (1991). See also *United States* v. *$1,322,242.58*, 938 F.2d 433, 437-438 (3d Cir. 1991) (declining to apply the rule that the departure of the *res* from the jurisdiction of the court deprives the court of jurisdiction when the *res* is money).

pending in the district court, the house was sold and the proceeds deposited with the United States Marshal. Following a bench trial, the district court issued a final judgment of forfeiture. The claimant appealed, but failed to post a supersedeas bond or seek a stay of the district court's judgment. The United States Marshal then transferred the proceeds of the sale of the house into the Department of Justice Assets Forfeiture Fund of the United States Treasury. Because the *res* was no longer within the court's control, the court of appeals dismissed the appeal.

Although this case involves forfeiture under 18 U.S.C. 981 rather than 21 U.S.C. 881, the Court's decision in *Republic National Bank* is likely to control the resolution of the jurisdictional issue in this case. In this case, as in *Republic National Bank*, the court of appeals dismissed the appeal because the *res* was no longer subject to the control of the district court. We therefore suggest that the Court hold the petition for a writ of certiorari in this case pending its decision in *Republic National Bank*.

CONCLUSION

The petition for a writ of certiorari should be held pending the Court's decision in *Republic National Bank* v. *United States*, cert. granted, 112 S. Ct. 1159 (1992), and then disposed of in light of the decision in that case.

Respectfully submitted.

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JUNE 1992

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

NO. CIV 89-262-TUC-WDB

UNITED STATES OF AMERICA, PLAINTIFF

vs.

$390,647.55 IN U.S. CURRENCY, DEFENDANT

ORDER

[Filed July 31, 1990]

This is a forfeiture case alleging that defendant currency was involved in structured transactions. The claimant, Jesus Castro-Vasquez made multiple deposits on the same day to different bank accounts, the individual deposits being less than $10,000, but the sum total exceeding $10,000. Claimant made such deposits on thirty-five different days during a three year period.

During the three year period, over $900,000 was deposited into three identified accounts. The deposits from the thirty-five days in question totaled more than $600,000. Thus, the government claimed probable cause that the $390,000 seized in the accounts, was from structured transactions.

Burden of Proof

The parties dispute who has the burden of proof in this case. The government contends that it only need present probable cause, after which the burden shifts to the claimant. This position is based on *U.S.* v. *One-56 Foot Yacht Named Tahuna*, 702 F.2d 1276 (9th Cir. 1982). However, that case is based on a different forfeiture statute. The claimant contends that the government has the burden of proof and cited a case from the Western District of New York for the proposition. *U.S.* v. *Scanio*, 705 F. Supp. 768 (W.D.N.Y. 1988). That case, though, is a criminal case and, thus, distinguishable from the one at bar.

More appropriate for review, is a 1989 case from the Southern District of New York. In *U.S.* v. *316 Units of Municipal Securities*, 725 F. Supp. 172 (S.D.N.Y 1989), the Court found that although the prior criminal trial had resulted in the finding that the defendants had no knowledge that structuring transactions was illegal, the Court was not collaterally estopped from redetermining the issue. The Court recognized that the civil standard was less burdensome than the criminal standard and, therefore, while the defendants might not be criminally guilty, they could be civilly liable.

The Court, in that case, noted that the government had the burden of proof only to establish a *prima facie* case for forfeiture. *316 Units*, 725 F. Supp. at 177 (citing *United States* v. *Banco Cafetero Panama*, 797 F.2d 1154, 1160 (2nd Cir. 1986); *United States* v. *One 1986 Mercedes Benz*, 846 F.2d 2, 4 (2d Cir. 1988)). The Government has the burden of showing probable cause for both the prohibited conduct and the specific intent required by the statute. *Id.* There is no disputing the fact that the prohibited conduct occurred. At issue is only whether or not claimant had the specific

intent to evade either the statute or its reporting requirements.

Claimant's counsel argued at trial that the law in question requires "intent." The law states

> No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction—
>
> . . .
>
> (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

31 U.S.C. § 5324. Thus, the law clearly states that the claimant must have had the intent to abuse the currency reporting requirements.

The Court in *316 Units* determined that to make the *prima facie* case for specific intent,

> knowledge or awareness of the reporting requirements need not be proven by direct evidence in a criminal prosecution, but may be established through inference from circumstantial evidence, such as participation in a structuring scheme, the elaborate nature of which serves no useful purpose other than that of evading federal reporting requirements.

316 Units, 725 F. Supp. at 180. By showing the eighty-one deposits on the thirty-five days in question, the government has provided just such circumstantial evidence. Thus the government has met its burden of proof, showing probable cause for the prohibited conduct and the specific intent.

When the government has established probable cause, the burden of proof shifts to the claimants. *Id.* at 179. Claimants must show "by a preponderance of

the evidence that the factual predicates for forfeiture has not been met." *Id.* (citing *Banco Cafetero*, 797 F.2d at 1160; *United States* v. *all Right, Title, Interest in Property Known as 303 West 116th Street*, 710 F. Supp. 502, 505 (S.D.N.Y. 1989)).

Claimant failed to meet that burden. At his deposition, claimant argued that while he did have daily transactions over $10,000 with the individual deposits under $10,000, it was not to avoid the law in question or its reporting requirements. He claimed that the transactions occurred to avoid the requirements of a law which requires that a person crossing the US border must report currency when $10,000 or more is imported *at one time*. Mr. Vasquez, a resident of Mexico, claimed that he, his secretary, and brother came into Douglas, Arizona multiple times on the days in question in order to avoid filing the form at the border.

Claimant's reasoning is incredible. He claimed, at the deposition, that he wanted to avoid the form at the border because it took too long to fill out. This makes no sense considering the time it must have taken to make three trips across the border, or the time it must have taken to complete three separate bank transactions. Thus, the Court finds that the government has met the burden of establishing probable cause and that the claimant has failed his burden to refute the claim. Therefore, the Court will order the defendant currency forfeited.

However, earlier this year, claimant moved for partial summary judgment as to a $50,000 certificate of deposit. The government had no objection, since the purchase amount existed in the account from which it was bought prior to the time of these events. The Court granted the motion. Thus, the Court's Order

affects only that sum of money currently held by the government.

Therefore, IT IS ORDERED, that all right, title, and interest in the defendant currency is vested in and forfeited to the United States and is the property of the United States of America and is to be disposed of according to the law; that all costs incurred by the U.S. Marshal's Service and the Clerk are to be deducted from the claimant's cost bond and the remaining amount, if any, is to be returned to the claimant.

Dated this 30 day of July, 1990.

/s/ William D. Browning
WILLIAM D. BROWNING
United States District Judge